

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Replacement of Part 90 by Part 88 to Revise)	PR Docket No. 92-235
the Private Land Mobile Radio Services and)	
Modify the Policies Governing Them)	
)	
Examination of Exclusivity and Frequency)	
Assignments Policies of the Private)	
Land Mobile Services)	

PETITION FOR RECONSIDERATION
OF THE
AMERICAN AUTOMOBILE ASSOCIATION

Marissa G. Repp
Steven F. Morris

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

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SUMMARY

The American Automobile Association ("AAA") is a not-for-profit association dedicated to promoting the safety of the American driving public. AAA provides emergency road services to 39 million members, and to the general public. In 1996, AAA responded to almost 30 million emergency calls. AAA also is the frequency coordinator for the Auto Emergency Radio Service ("Auto Emergency"), providing frequency coordination services to AAA clubs and independent garages throughout the country.

In the *Second Report and Order*, the Commission consolidated twenty separate Private Land Mobile Radio services into two broad pools -- the Public Safety Pool and the Industrial/Business Pool. Frequency coordinators for services placed in the Public Safety Pool retain the ability to coordinate their existing frequencies, while frequencies in the Industrial Pool (except for three quasi-public safety services) may be coordinated by any coordinator within the pool. The Commission placed the Auto Emergency frequencies in the Industrial pool and did not classify Auto Emergency as a quasi-public safety service.

The Commission's exclusion of Auto Emergency from the Public Safety Pool is arbitrary and capricious. The Commission failed to acknowledge AAA's record of public service and the substantial impact of AAA on the public in emergency situations. As demonstrated herein, many of the more than 80,000 calls AAA responds to each day involve some threat to personal safety, be it a baby

locked in a car or a multi-vehicle accident on a crowded highway. Any delay in responding to these situations could have devastating consequences for the individuals involved, and for the driving public. In recognition of the important role played by AAA, many state and local government agencies work closely with AAA to ensure a prompt response to emergency situations.

The exclusion of the Auto Emergency frequencies from the Public Safety Pool will produce results that run counter to the Commission's stated objectives. The reason for creating a separate public safety pool was to relieve the strain that would result from competing demands on public safety spectrum use. Yet by placing Auto Emergency in the Industrial Pool, and giving AAA no ability to prevent inconsistent uses of the frequencies, the Auto Emergency frequencies will be subject to more competing demands. This unquestionably will interfere with AAA's ability to provide the timely, reliable emergency road service that millions of members, as well as state and local government, have come to expect.

The Commission's decision also is flawed because the Commission failed to explain why the Auto Emergency frequencies were not entitled to the same protection as the Special Emergency Radio Service, which includes such services as beach patrol, private ambulances, highway maintenance and school buses. As with these services, the services provided by AAA affect millions of people in a wide range of situations, some of which are life and death situations. The Commission offered no justification for the disparate treatment of these similar types of services.

The Commission can remedy the flaws in these *Second Report and Order* by placing the Auto Emergency frequencies in the Public Safety Pool and giving AAA the same coordination rights over those frequencies as other coordinators in the pool have over their frequencies. In addition, because a number of Auto Emergency users also rely on frequencies obtained from other services, the Commission should grandfather any interpool sharing that results from moving the Auto Emergency frequencies into the Public Safety Pool, and give these users continuing access to frequencies in the Industrial Pool.

If the Commission nevertheless concludes that Auto Emergency should not be included in the Public Safety Pool, the Commission should, at a minimum, provide AAA with the same coordination rights as other quasi-public safety coordinators in the Industrial Pool. As such, AAA should have an obligation to share frequencies with non-Auto Emergency users that is comparable to its obligation under the interservice sharing rules. In addition, if sponsored by a government agency, the Commission should create a limited exception to the prohibition on interpool sharing under which AAA would be entitled to use frequencies in the Public Safety Pool.

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PETITION FOR RECONSIDERATION

The American Automobile Association ("AAA"), by its attorneys and pursuant to 47 C.F.R. § 1.429, hereby requests that the Commission reconsider in part its *Second Report and Order* in the above-referenced docket. 1/ The Commission's exclusion of the Automobile Emergency Radio Service ("Auto Emergency") from the Public Safety Pool is arbitrary and capricious because it ignores the significant public safety functions performed by AAA and will place a greater strain on AAA's ability to deliver those services. To rectify this situation, the Commission should: (1) place the Auto Emergency frequencies in the Public Safety Pool; (2) give AAA the same coordination rights over the Auto Emergency frequencies as other coordinators in that pool have for their frequencies; and

1/ *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Second Report and Order, PR Docket No. 92-235, FCC 97-61 (released March 12, 1997; published in *Federal Register* April 17, 1997) ("*Second Report and Order*").

(3) grandfather any interpool sharing that results from such a decision and permit grandfathered users to expand these arrangements as needed. If the Commission does not adopt this proposal, it should, at a minimum, grant AAA stronger coordination rights within the Industrial Pool in recognition of the important public safety functions for which the Auto Emergency frequencies are used.

I. INTRODUCTION

AAA is a not-for-profit association dedicated to promoting the safety of the American driving public. AAA has 39 million members served through auto clubs throughout the United States. It provides emergency road services, as well as other travel-related services, to its members and to the public. In 1996, AAA responded to almost 30 million emergency calls.

AAA also is the frequency coordinator for the Automobile Emergency frequencies, providing frequency coordination services to automobile clubs throughout the country and to independent garages that provide road service assistance to the public. Approximately 30,000 of the 37,000 road service vehicles employed by the clubs are dispatched on Auto Emergency frequencies.

AAA has been an active participant in this docket. In response to the Commission's *Further Notice of Proposed Rulemaking*, in which the Commission first proposed consolidating the twenty separate private land mobile radio ("PLMR")

services into broad pools, AAA advocated the creation of a "private safety" pool. 2/ Under this proposal, three pools would have been created, one for government users, one for commercial users and one for non-government entities that perform public safety activities, *i.e.*, "private safety" entities. AAA's proposal was based on the premise that the functions performed by private safety entities are sufficiently important to the public that they warrant a distinct set of frequencies that would be free from competing demands. 3/

In the *Second Report and Order*, the Commission consolidated the twenty PLMR services into two broad service pools -- the Public Safety Pool and the Industrial/Business Pool -- and did not create a private safety pool as advocated by AAA. 4/ The Public Safety Pool is open to government users and private entities that were eligible for the Special Emergency Radio Service ("Special Emergency"). 5/ Auto Emergency was not included in the Public Safety Pool. 6/

2/ See *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Comments of the American Automobile Association on Consolidation of Radio Services (filed November 20, 1995).

3/ As an alternative, AAA proposed creating a "land transportation" pool which would include services such as Auto Emergency, Taxicab and Railroad. The principle underlying this proposal was that these services were sufficiently similar that they could be coordinated in a single pool without jeopardizing the interests of licensees.

4/ Frequencies above 800 MHz and in the 470-512 MHz band are not subject to this consolidation. *Second Report and Order* at ¶ 20.

5/ *Second Report and Order* at ¶ 23.

6/ *Id.*

Frequency coordinators in the services that now comprise the Public Safety Pool retain complete control over the assignment of the frequencies they formerly controlled. 7/

In contrast, the Industrial Pool is open to all commercial entities. 8/ Frequency coordinators for the services that now comprise the Industrial Pool may coordinate any frequency within the pool, except for frequencies in the former Railroad, Power and Petroleum services. 9/ Frequencies in these three services must be coordinated by the appropriate coordinator, although those coordinators must accommodate requests from any user eligible for the Industrial Pool. 10/

The rules adopted by the Commission in the *Second Report and Order* will have a substantial impact on AAA and other entities that use the Auto Emergency frequencies. Placing the Auto Emergency frequencies in the Industrial Pool without giving AAA any control over coordination jeopardizes AAA's ability to provide emergency road services to its members and to the public. The Commission's exclusion of Auto Emergency from the Public Safety Pool is not supported by the record and is not consistent with the Commission's stated objectives because it fails to recognize the public safety functions performed by AAA and actually hinders the ability of AAA to perform those functions.

7/ *Second Report and Order* at ¶ 37.

8/ *Second Report and Order* at ¶ 27.

9/ *Second Report and Order* at ¶ 41-42.

10/ *Second Report and Order* at ¶ 42

To rectify this situation, AAA proposes that the Auto Emergency frequencies be placed in the Public Safety Pool and that AAA have the same coordination rights for the Auto Emergency frequencies as coordinators for the other services included in that pool. In recognition of the fact that some Auto Emergency licensees also are licensed for non-Auto Emergency frequencies, the Commission should grandfather any interpool sharing that results from moving Auto Emergency into the Public Safety Pool, and permit these existing interpool uses to expand as necessary.

If the Commission chooses not to transfer the Auto Emergency frequencies to the Public Safety Pool, it should, at a minimum, grant AAA the same control over its frequencies as the coordinators for the Railroad, Power and Petroleum services. Like these services, any inability of Auto Emergency users to communicate by radio would have severe public safety consequences. As a quasi-public safety coordinator, AAA's obligation to share frequencies with non-Auto Emergency users should be comparable to its obligation under the current interservice sharing rules. In addition, when sponsored by a government user, AAA should have access to frequencies in the Public Safety Pool.

II. EXCLUSION OF AUTO EMERGENCY SERVICE FROM THE PUBLIC SAFETY POOL IS ARBITRARY AND CAPRICIOUS.

Under the Administrative Procedure Act ("APA"), 47 U.S.C. § 706(2)(A), the Commission must articulate a rational connection between the facts

before it and the decision made. 11/ Not only must the Commission's decision be consistent with the facts, but it also must be consistent with the agency's stated policy objectives. 12/ In addition, the Commission is obligated to treat similarly situated entities in a nondiscriminatory manner. 13/ By ignoring the significant public safety activities performed by AAA while giving preferred treatment to other quasi-public safety entities, the *Second Report and Order* violates all these principles. To rectify this situation, the Commission should move the Auto Emergency frequencies to the Public Safety Pool, and give AAA the same coordination rights as other coordinators in that pool.

A. The Commission Failed To Acknowledge The Substantial Public Safety Activities Performed By AAA And Other Entities Using The Auto Emergency Frequencies.

To satisfy the APA, the Commission must articulate a rational connection between the facts before it and the decision made. 14/ The Commission has not done that here. The major flaw in the Commission's *Second Report and Order* is its failure to acknowledge the substantial public safety role played by AAA and incorporate this fact into its decision. As demonstrated below, the services

11/ *Motor Vehicles Man. Ass'n v. State Farm Auto Insurance Co.*, 463 U.S. 29, 43 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

12/ *AT&T v. FCC*, 836 F.2d 1386, 1390-91 (D.C.Cir. 1988); *Ohio Bell v. FCC*, 949 F.2d 864, 872-73 (6th Cir. 1991).

13/ *Freeman Engineering v. FCC*, 103 F.3d 169, 180 (D.C.Cir. 1997).

14/ *State Farm*, 463 U.S. at 29.

provided by AAA unquestionably should be categorized as safety services that warrant the same protection as government-provided safety services. This conclusion is supported by the extensive use of AAA services by government public safety officials. Given this factual evidence, the Commission's decision to exclude the Auto Emergency frequencies from the Public Safety Pool is arbitrary and capricious under the APA.

AAA offers a variety of services to its members, but the primary reason 39 million people have joined AAA is for reliable, timely emergency road service. AAA responds to a vast range of emergency calls, some of which are as simple as starting a dead battery in the customer's driveway, and some which involve emergency situations where time is of essence. Some of the more than 80,000 emergency situations that AAA handles each day include assisting stranded motorists in extreme weather conditions or in unsafe neighborhoods, rescuing children and elderly people from inside locked cars, and responding to accidents on heavily trafficked roads to avoid further injury, property damage and traffic disruptions. While AAA handles these situations on an everyday basis, for the motorists involved these are emergency situations that require the fastest possible response. Moreover, in accident situations, a prompt response by AAA not only benefits the AAA member, but other drivers that otherwise would be stuck in traffic or at increased risk of further accidents.

AAA's provision of these emergency services clearly relieves some of the burden on the government agencies that otherwise would be responsible for

handling these situations, and in many cases AAA provides these services in partnership with state and local government. In a recent survey of the AAA clubs, 68 percent of the clubs that responded indicated that they cooperate in some way with law enforcement and rescue agencies. ^{15/} In some jurisdictions, the AAA dispatcher will call police or rescue agencies when it receives a call involving a dangerous situation. In many jurisdictions, the AAA club is tied directly into the Emergency 911 system or has a direct line to police and other emergency service agencies. In California, for example, one of the AAA clubs handles over 4000 calls annually from the California Highway Patrol just in the San Francisco area. These are not motorists calling from safe locations, but requests from a state agency for AAA to assist them in clearing the highway, providing safety for the individuals involved and eliminating the potential for further accidents.

AAA also has a history of helping state and local government in mass emergency situations. In California, one of the AAA clubs has set up a radio network to assist in relief efforts for flood victims, volunteered its disaster trailer and radio equipment to assist with fire-fighting efforts and assisted a number of state agencies in the aftermath of an earthquake through the use of its contractor network of tow vehicles, all radio dispatched. This is only a sample of what AAA has done in California, and it has made similar efforts to assist with natural disasters in other states.

^{15/} A summary of the responses to this question is attached hereto as Exhibit A.

The effectiveness of AAA's response to both day-to-day emergencies, as well as major disaster situations, would have been severely diminished if AAA had to share the Auto Emergency frequencies with pizza delivery, taxicabs or other non-emergency services. Unfortunately, that is precisely the effect that *Second Report and Order* will have. AAA placed information on the record that demonstrated the extent of its public safety activities, but it was ignored by the Commission. Because there is no connection between the facts on the record and the Commission's decision to exclude AAA from the Public Safety Pool, the Commission's decision is arbitrary and capricious in violation of the APA.

B. The Exclusion Of Auto Emergency Frequencies From The Public Safety Pool Is Inconsistent With The Commission's Stated Objectives.

The APA requires that the Commission's decision must be consistent with its stated policies. ^{16/} The Commission's stated goal in establishing the Public Safety Pool was to limit the strain on public safety spectrum use that would result if there were too many competing demands for spectrum:

Our reasons for establishing a separate public safety pool stem from the fact that a majority of the communications required by the public safety community are used to protect life and property and because public safety operations can affect the lives of hundreds, thousands and or even tens of thousands of people. We recognize that competing demands for and use of spectrum from entities with a different mission and less critical set of needs than

^{16/} *AT&T*, 836 F.2d at 1390. If the Commission changes policy, it must articulate a rational basis for doing so. *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C.Cir. 1970), *cert. denied* 403 U.S. 923 (1971).

this community could place an unacceptable strain on the integrity of public safety spectrum use. 17/

The Commission's decision to place Auto Emergency in the Industrial Pool is inconsistent with the objectives underlying creation of the Public Safety Pool and jeopardizes AAA's ability to perform public safety activities. While other providers of public safety services will be protected from competing demands on their spectrum in the Public Safety Pool, the effect of the *Second Report and Order* will be to subject AAA and Auto Emergency users to increased demands. Given the demonstrated safety role performed by AAA and the policy goals articulated by the Commission, the Commission's decision to exclude Auto Emergency from the Public Safety Pool is arbitrary and capricious under the APA.

Placing the Auto Emergency frequencies in the Industrial Pool will subject them to more competing demands because AAA no longer will have the ability to control the use of the Auto Emergency frequencies so as to reduce potential incompatible uses. Controlling the number of users on the Auto Emergency frequencies is critical to accommodating demand for AAA's services, particularly at peak times such as rush hour or periods of extreme weather. AAA is sensitive to these needs in its role as frequency coordinator, but it is doubtful that other coordinators in the Industrial Pool will be equally sensitive.

Indeed, the incentive for coordinators in the Industrial Pool is to assign frequencies outside the frequencies they formerly controlled so that the frequencies

17/ *Second Report and Order* at ¶ 16.

now used by their constituents are protected from competing demands. This works to the disadvantage of smaller coordinators like AAA, who will be powerless to control what happens with their former frequencies. This concern might be less significant if all entities in the Industrial Pool were strictly commercial businesses, but that is not the case. As explained above, the Auto Emergency frequencies are unique within the Industrial Pool because they are used primarily for safety-related services, and the impact of being placed in the Industrial Pool is certain to be increased congestion of the Auto Emergency frequencies.

AAA's recent survey of its clubs demonstrates that the primary impact of this increased congestion on the Auto Emergency frequencies will be a delay in the time it takes to dispatch a rescue vehicle to the scene of an emergency, particularly during peak periods when many Auto Emergency frequencies already are near capacity. ^{18/} There are countless situations where this delay could have terrible consequences. As described above, AAA routinely rescues babies that are locked in cars, removes vehicles from busy and dangerous roads, and assists motorists stranded in unsafe areas. A delay of even a few minutes in responding to these situations could have life-threatening consequences. As one Midwestern club stated in response to a recent survey:

I have a real concern about timely radio communications during weather extremes (cold, snow and blizzard conditions). Prompt response is a serious issue when personal safety is at stake! In

^{18/} Attached as Exhibit B is a summary of the responses to a question asking the impact that use of Auto Emergency frequencies by non-Auto Emergency users would have.

general, allowing additional users, let alone non-emergency users, on the auto emergency frequencies would have a significant impact on AAA's ability to promptly respond. 19/

The best way to rectify this situation is to place the Auto Emergency frequencies in the Public Safety Pool, and to give AAA the same coordination rights as government users in the pool. This approach is supported by AAA's record of public service and consistent with the Commission's goals in this proceeding.

C. There Is No Rational Basis For Treating Auto Emergency Differently Than Special Emergency With Regard To Placement In The Public Safety Pool.

Due process requires that the Commission treat similarly situated parties in a nondiscriminatory manner. 20/ When the Commission draws lines as it did here in creating the two pools, it must provide a rational basis for the lines it draws. 21/ In this case, there is no rational basis for distinguishing between Special Emergency and Auto Emergency as to eligibility in the Public Safety Pool, and the Commission did not even attempt to offer any rationale for treating the two services differently. Consequently, the Commission's decision is arbitrary and capricious.

Special Emergency users include services such as medical services, rescue organizations, veterinarians, school buses and beach patrols. Special

19/ Letter from Ken Mohr, AAA Minneapolis to Marshall Doney, American Automobile Association, attached hereto as Exhibit C.

20/ *Freeman*, 103 F.3d at 180.

21/ *Capital Cities Communications v. FCC*, 554 F.2d 1135, 1139 (D.C.Cir. 1976); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C.Cir. 1965).

Emergency and Auto Emergency are similar in that the mission of both is to protect individuals from potentially harmful situations. While some Special Emergency users operate almost exclusively in emergency situations, others (*e.g.*, school buses, veterinarians and beach patrols) use frequencies for more routine matters as well. Thus, Special Emergency and Auto Emergency users both have a need for uninterrupted communications to ensure a prompt response to emergency situations. Similarly, the services provided by both types of users impact thousands of people each day, and millions of people each year. In sum, there is no discernible difference between Auto Emergency and Special Emergency that would justify the Commission's decision to exclude Auto Emergency from the Public Safety Pool. The Commission should rectify this constitutional violation by placing the Auto Emergency frequencies in the Public Safety Pool.

D. The Commission Should Grandfather Any Interpool Sharing That Results From Transferring the Auto Emergency Frequencies To The Public Safety Pool.

Prior to the *Second Report and Order*, the Commission's rules promoted efficient use of spectrum through interservice sharing. Under the interservice sharing rules, an entity that could not obtain access to frequencies in the service for which it was eligible had the ability to request frequencies within another service from the coordinator of those frequencies. 22/ AAA honored many

22/ 47 C.F.R. § 90.176.

such requests as coordinator for the Auto Emergency frequencies, and many Auto Emergency users depend on frequencies obtained from other services. 23/

In establishing the two-pool system, the *Second Report and Order* eliminates the interservice sharing rule and concludes that interpool sharing will not be permitted at this time. 24/ If the Commission adopts AAA's proposal to move the Auto Emergency frequencies, a strict application of the prohibition on interpool sharing could be read to require Auto Emergency users to give up any frequencies they obtained through interservice sharing. Such an interpretation would create substantial congestion on some Auto Emergency frequencies -- precisely the type of situation that interservice sharing was intended to avoid. This congestion would seriously jeopardize the ability of some Auto Emergency users to meet the demand for their services.

Accordingly, if the Commission moves the Auto Emergency frequencies to the Public Safety Pool as proposed herein, it also must grandfather any interpool sharing that results. In addition, Auto Emergency users that are grandfathered under this proposal should be permitted to expand their use of any Industrial Pool frequencies to accommodate any future growth. Those Auto Emergency users that also use other frequencies in the Industrial Pool already have demonstrated that they cannot satisfy their spectrum needs solely through the Auto Emergency

23/ In addition, many Auto Emergency users also use frequencies that are not included in the consolidation proposed in the *Second Report and Order*, such as frequencies in the 800 and 900 MHz bands.

24/ *Second Report and Order* at ¶ 29.

frequencies. Consequently, even if the Auto Emergency frequencies are placed in the Public Safety Pool, these users should have continuing access to additional frequencies in the Industrial Pool.

III. AT A MINIMUM, AAA SHOULD HAVE THE SAME COORDINATION RIGHTS WITHIN THE INDUSTRIAL POOL AS OTHER “QUASI-PUBLIC” SAFETY ENTITIES AND ACCESS TO PUBLIC SAFETY FREQUENCIES IN SPECIAL CIRCUMSTANCES.

As demonstrated in the previous section, the safety services provided by AAA warrant protection within the Public Safety Pool. Despite the record supporting inclusion of Auto Emergency in the Public Safety Pool, if the Commission nevertheless concludes that Auto Emergency frequencies should be placed in the Industrial Pool, the unique role played by AAA justifies granting AAA additional coordination rights within that pool. In addition, when supported by a state or local government agency, AAA should have limited access to frequencies in the Public Safety Pool.

A. AAA Is Entitled To The Same Coordination Rights As Other “Quasi-Public” Safety Providers.

In establishing the two pools, the Commission recognized that some entities that would not otherwise be eligible for the public safety pool nevertheless serve important public safety needs. 25/ The Commission singled out three services -- Railroads, Power and Petroleum -- that fit this “quasi-public” safety definition

25/ *Second Report and Order* at ¶ 40.

and accorded special treatment to those services with regard to frequency coordination. 26/ If the Commission does not move the Auto Emergency frequencies to the public safety pool, it should, at a minimum, treat Auto Emergency as a quasi-public safety entity with the same coordination rights as Railroads, Power and Petroleum.

The justification advanced by the Commission for giving these coordinators additional control over their frequencies is equally applicable, if not more so, to AAA. The Commission explained its decision as follows:

Although the primary function of these organizations is not necessarily to provide safety services, the nature of their day-to-day operations provides little or no margin for error and in emergencies they can take on an almost quasi-public safety function. Any failure in their ability to communicate by radio could have severe consequences on the public welfare. 27/

This logic applies to AAA as much as to the three services identified by the Commission. Any failure in the ability of AAA to dispatch a rescue vehicle to the scene of emergency could "have severe consequences for the public welfare." Not only is the individual caller at risk, but hundreds, and even thousands, of other motorists are affected by the swiftness of AAA's response. Furthermore, every day AAA responds to over 80,000 emergency calls a day, and almost 30 million calls over the course of a year. Moreover, while safety is only incidental to the use of

26/ *Second Report and Order* at ¶ 41-42.

27/ *Second Report and Order* at ¶ 41.

frequencies in these other services, for AAA it is the primary reason for using the frequencies.

All these reasons provide ample support for placing Auto Emergency in the Public Safety Pool. At a minimum, however, given the Commission's obligation to treat similarly situated entities in a nondiscriminatory manner, the Commission must provide AAA with at least the same coordination rights as other quasi-public safety entities.

B. The Obligation to Share Quasi-Public Safety Frequencies Should Be No Greater Than Under The Existing Interservice Sharing Rules.

As the Commission recognized in the *Second Report and Order*, coordinators of quasi-public safety frequencies must have the ability to control the use of frequencies so as not to jeopardize the ability to communicate in an emergency. Despite this acknowledgment, the Commission imposed on quasi-public safety coordinators an obligation to "make every effort to accommodate all applicants on those frequencies, regardless of the type of business they conduct." 28/

It is not certain from the *Second Report and Order* how much discretion a quasi-public safety coordinator will have to deny a request for frequencies if the coordinator believes the request would jeopardize existing use of the frequencies. AAA believes the Commission should apply standards comparable to those under the interservice sharing rules. Specifically, a commercial entity that

28/ *Second Report and Order* at ¶ 42.

requests the use of a quasi-public frequency should be required to make some demonstration that there are no other satisfactory frequencies available to that user. 29/ In addition, the proposed use must not violate any technical limitations in the quasi-public service. 30/ By clarifying these requirements, the Commission will ensure that the ability of AAA and other entities providing safety services is not needlessly jeopardized by non-safety users that could be placed on other frequencies within the Industrial Pool.

C. A Quasi-Public Safety Entity That Is Sponsored By A Government Entity Should Be Eligible To Use Public Safety Frequencies.

As explained above, the Commission's primary motivation for establishing a separate public safety pool was to ease the strain on public safety communications that would result from competing demands by users with less urgent needs. 31/ One of the ways in which the *Second Report and Order* promotes public safety goals is by requiring non-government entities that are eligible for the Public Safety Pool to obtain government concurrence before they are assigned government frequencies within that pool. 32/

29/ 47 C.F.R. § 90.176.

30/ *Id.*

31/ *Second Report and Order* at ¶ 16.

32/ *Second Report and Order* at ¶ 23 n. 55. Special Emergency entities may use frequencies in the Special Emergency service without obtaining the consent of a government agency. Similarly, if Auto Emergency is moved into the Public Safety

Because of this important safeguard, AAA believes the Commission can expand the list of eligible users of government frequencies in the Public Safety Pool to include quasi-public safety entities in the Industrial Pool that obtain a statement of support from a government user. This exception to the general prohibition on interpool sharing would apply in circumstances in which a quasi-public safety entity could demonstrate that access to public safety frequencies was necessary for it to carry out activities that benefit the safety of the public. For example, if AAA has a direct line to the police department in a jurisdiction and routinely performs services that otherwise would be the responsibility of that police department, AAA's communications should be entitled to the same protection as police communications.

This proposal is consistent with the Commission's treatment of other non-governmental entities, such as volunteer fire departments and nature conservancies, that need access to public safety frequencies. Permitting certified quasi-public safety entities to use public safety frequencies would ensure that legitimate public safety services are not jeopardized by congestion in the Industrial Pool, while still preserving the fundamental goals underlying creation of the Public Safety Pool.

Pool, an Auto Emergency user would not be required to obtain government consent to use the Auto Emergency frequencies.

IV. CONCLUSION

AAA provides an important public safety service, but the Commission failed to acknowledge this fact and provide appropriate treatment of the Auto Emergency frequencies in the *Second Report and Order*. The Auto Emergency frequencies should be placed in the Public Safety Pool and AAA should have the same coordination rights over these frequencies as other coordinators in that pool have over their frequencies. Any interpool sharing that results from implementing this proposal should be grandfathered, and grandfathered users should be permitted to expand these arrangements as needed. If the Commission does not follow this approach, it should, at a minimum, give AAA stronger coordination rights within the Industrial Pool and, when sponsored by a government user, access to public safety frequencies.

Respectfully submitted,

AMERICAN AUTOMOBILE ASSOCIATION

By: 

Marissa G. Repp
Steven F. Morris

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

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